

LCQ6: Circumstances that HKSAR Government refuses surrender of fugitives

Following is a question by Dr the Hon Cheng Chung-tai and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (July 4):

Question:

The Hong Kong Policy Act Report published by the Department of State of the United States (US) in May this year pointed out that the Chief Executive had turned down, in October last year at the behest of the Central Government, a fugitive surrender request made by the US Government. The Report also alleged that certain actions by the Central Government had been inconsistent with its commitment in the Basic Law to allow Hong Kong to exercise a high degree of autonomy. Some members of the public are worried that the US authorities may no longer recognise Hong Kong's status as a separate customs territory on the grounds that Hong Kong has lost its high degree of autonomy. In this connection, will the Government inform this Council:

(1) whether it will refuse fugitive surrender requests made by other jurisdictions on the grounds that the identity of the fugitive concerned is sensitive or that surrendering the fugitive will arouse political and national defense concerns; and

(2) whether it has assessed the resultant impacts on Hong Kong's economic and trade activities, as well as Hong Kong residents' entry into US and their personal safety, in the event that the US authorities amend or repeal the Hong Kong Policy Act; if so, of the assessment outcome, relevant data and contingency measures?

Reply:

President,

In the Hong Kong Policy Act Report submitted by the United States (US) Department of State to the US Congress as referred in the question, it was mentioned that in respect of a request for surrender of fugitive offenders (SFO) made by the US Government, the Chief Executive (CE) refused the request in October 2017 "at the behest of the Central Government". The statement in the Report suggests that the CE's decision in the case concerned was made in a manner other than in accordance with the Fugitive Offenders Ordinance (FOO) (Cap 503) and the SFO agreement signed between the governments of the two places. The Hong Kong Special Administrative Region (HKSAR) Government has already issued a public statement to show its deep regret over that

inaccurate statement in the Report.

My reply to the Hon Cheng's question is as follows:

(1) Each individual SFO case is processed by the HKSAR Government in strict accordance with the FOO and the relevant SFO agreements signed with the respective jurisdictions. Article 96 of the Basic Law states that with the assistance or authorisation of the Central People's Government, the HKSAR Government may make appropriate arrangements with foreign states for reciprocal juridical assistance. Since Hong Kong's return to the Motherland, the HKSAR Government has been actively building the juridical assistance network with other jurisdictions with a view to combating crimes. As far, Hong Kong has signed SFO agreements with 20 jurisdictions (Note).

Before signing agreements with other places, the HKSAR Government will conduct detailed negotiations and exchanges with the other party on the social background, judicial system, legal basis, interpretation on agreement provisions and implementation details, etc. We will also explain the specific provisions in the FOO, including certain circumstances that a fugitive shall or may not be surrendered, such as the offence involved in the surrender does not constitute an offence in both the requesting party and Hong Kong (section 2(2)); that offence is of a political character (section 5(1)(a)); that offence was prosecuted in the absence of the fugitive and a conviction obtained (section 5(1)(b)); the surrender request has been made on account of race, religion, nationality or political opinions of the fugitive; or if the fugitive is surrendered, he may be prejudiced at trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions (sections 5(1)(c) and (d)); the fugitive has already been tried or acquitted, or convicted and served his sentence, for the offence involved (section 5(1)(e)); the requesting party has not guaranteed that the fugitive would not be tried for a crime other than that for which his surrender was ordered (section 5(2)); the requesting party has not guaranteed that the fugitive would not be surrendered to a third jurisdiction (section 5(5)); and if that offence is punishable with death, but the requesting party has not given an assurance that the punishment will not be imposed or carried out (section 13(5)).

In light of the actual circumstances in different places, the expressions in each agreement may vary, but the substance of the arrangement must be in conformity with the provisions of the FOO. The relevant agreements are required to be enacted by the Legislative Council before they can be put into effect in Hong Kong.

The SFO arrangements between Hong Kong and the US are stipulated in the Agreement between the Government of Hong Kong and the Government of the United States of America for the Surrender of Fugitive Offenders (Agreement) under the Fugitive Offenders (United States of America) Order (Cap 503F). On top of mirroring the above provisions under the FOO, the Agreement also specifies that fugitives shall or may not be surrendered under certain circumstances under the principle of reciprocity, such as:

Under Article 3(2), the US Government reserves the right to refuse the surrender of US nationals in cases in which the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the US;

Under Article 3(3), which is the reciprocal article to this point, the Hong Kong Government reserves the right to refuse the surrender of nationals of the State whose government is responsible for the foreign affairs relating to Hong Kong in cases in which:

(i) The requested surrender relates to the defence, foreign affairs or essential public interest or policy of the State whose government is responsible for the foreign affairs relating to Hong Kong, or

(ii) The person sought neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the State whose government is responsible for the foreign affairs relating to Hong Kong has jurisdiction over the offence relating to the requested surrender and has commenced or completed proceedings for the prosecution of that person;

Other reciprocal articles, such as Article 7, the surrender is likely to entail exceptionally serious consequences related to age or health; or Article 11, if the surrender of a fugitive is requested concurrently by different places, the requested party shall make its decision having regard to all the circumstances, including the relevant provisions of such arrangements, the place of commission of the offences, their relative seriousness, the respective dates of the requests, the nationality of the fugitive offender, the nationality of the victim, and the possibility of subsequent surrender to another jurisdiction.

The HKSAR Government handles each SFO request in strict accordance with the requirements of the F00. Upon receipt of a request, the CE must first issue an authority to proceed before the request can be processed further. The decision on whether to issue an authority to proceed rests entirely with the CE in strict accordance with the laws of Hong Kong, and the CE would consult the Department of Justice before making such a decision. The CE would only make a decision after taking into full account the relevant facts and circumstances of each case.

Since Hong Kong's return to the Motherland, the HKSAR has been fully and faithfully implementing the "One Country, Two Systems", "Hong Kong people administering Hong Kong" and high degree of autonomy in strict accordance with the Basic Law. The full and successful implementation of the "One Country, Two Systems" has been widely recognised by the international community.

(2) The United States-Hong Kong Policy Act (the Act) was enacted by the US Congress in 1992. According to the Act, in view of the implementation of "One Country, Two Systems" in Hong Kong and the high degree of autonomy enjoyed by Hong Kong on all matters other than defence and foreign affairs, the US will establish bilateral relations with Hong Kong in a wide range of

areas, and provide Hong Kong with treatments different to those accorded to Mainland China.

Since Hong Kong's return to the Motherland, the US Dollar can be freely exchanged in Hong Kong and the US has recognised passports and travel documents issued by the HKSAR Government; recognised ships and planes registered in Hong Kong and airline licences issued by Hong Kong; maintained and expanded cultural, educational, academic and scientific exchanges with Hong Kong, as well as maintained and expanded trade and economic ties with Hong Kong, including the treatment of Hong Kong as a separate customs territory.

The US also maintains a strong trade relation with Hong Kong. The US is Hong Kong's second largest trading partner economy in merchandise trade, while Hong Kong is the US' 9th largest export market. According to the US' statistics, bilateral trade in goods and services between the US and Hong Kong amounted to about US\$69 billion in 2017. The US has all along been enjoying its largest bilateral trade surplus world-wide with Hong Kong. In 2017, the surplus reached US\$34.5 billion, with a surplus in trade in goods at US\$32.5 billion. Moreover, Hong Kong and the US maintain close investment relation. In 2016, the US was the 6th largest source of direct inward investment in Hong Kong and the 8th largest destination of direct outward investment from Hong Kong. The HKSAR Government will continue to maintain and enhance our trade and economic ties with the US.

As regards the immigration policy of individual countries, it is related to their internal affairs and we are not in a position to make comments.

Thank you, President.

Note: Australia, Canada, Czech, France, Finland, Germany, India, Indonesia, Ireland, Malaysia, the Netherlands, New Zealand, the Philippines, Portugal, the Republic of Korea, Singapore, South Africa, Sri Lanka, the United Kingdom and the US.